

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KEVIN NIEVES

(b) County of Residence of First Listed Plaintiff LUZERNE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Aaron B. Gorodetzer, Esq., Sbarbaro Law Offices, LLC
705 Gordon Drive, Exton, PA 19341, 610-344-7300

DEFENDANTS

BOROUGH OF WEST CHESTER, et. al.

County of Residence of First Listed Defendant CHESTER
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability LABOR <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983

Brief description of cause:
EXCESSIVE FORCE

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10-29-2021

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: _____

Address of Defendant: _____

Place of Accident, Incident or Transaction: _____

RELATED CASE, IF ANY:

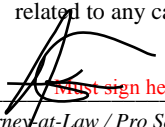
Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|-----------------------------|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☐ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____


Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
☐ 2. FELA
☐ 3. Jones Act-Personal Injury
☐ 4. Antitrust
☐ 5. Patent
☐ 6. Labor-Management Relations
☐ 7. Civil Rights
☐ 8. Habeas Corpus
☐ 9. Securities Act(s) Cases
☐ 10. Social Security Review Cases
☐ 11. All other Federal Question Cases
(Please specify): _____

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
☐ 2. Airplane Personal Injury
☐ 3. Assault, Defamation
☐ 4. Marine Personal Injury
☐ 5. Motor Vehicle Personal Injury
☐ 6. Other Personal Injury (Please specify): _____
☐ 7. Products Liability
☐ 8. Products Liability – Asbestos
☐ 9. All other Diversity Cases
(Please specify): _____


ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, _____, counsel of record or pro se plaintiff, do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:
- ☐ Relief other than monetary damages is sought.

DATE: _____


Attorney-at-Law / Pro Se Plaintiff

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KEVIN NIEVES,

Plaintiffs,

vs.

**BOROUGH OF WEST CHESTER,
OFFICER JERRY FERRIOLA
OFFICER GREG CUGINO**

Defendants.

:

:

: **CIVIL NO. 2:21-cv-04778**

:

: **CIVIL ACTION**

:

:

: **JURY TRIAL DEMANDED**

COMPLAINT

PRELIMINARY STATEMENT

1. This is an action under 42 U.S.C. § 1983 and the United States Constitution challenging the policy and practice of the Borough of West Chester denying citizens in custody medical treatment for injuries suffered during an arrest, the failure to supervise and train police officers to refrain from utilizing methods of arrest that constitute excessive force stemming from a November 2, 2019 incident whereby Borough of West Chester Police Officers Jerry Ferriola and Greg Cugino utilized excessive force during an arrest of Plaintiff Kevin Nieves during an incident outside Barnaby's restaurant whereby the officers used excessive force, forced Mr. Nieves to the ground, and one of them struck Mr. Nieves in the head with a closed fist. As a result of the referenced customs and policies of Borough of West Chester and the conduct of the aforementioned officers Plaintiff Kevin Nieves suffered injuries to his face, head, neck and back, as well as bruising and psychological injury. The outrageous conduct of the Defendants violates numerous constitutional protections. Defendants also assaulted, battered and intentionally inflicted emotional distress upon Mr. Nieves.

JURISDICTION AND VENUE

2. This court has jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, 42 U.S.C. § 1983, and the Fourth, and Fourteenth Amendments to the United States Constitution.
3. Venue for this action properly lies in this Judicial District pursuant to 28 U.S.C. § 1391 (b) because all of the events that give rise to the claims in this action occurred in this District.

4. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

PARTIES

5. Plaintiff Kevin Nieves is and was at all relevant times a citizen of the Commonwealth of Pennsylvania and the United States of America, currently residing at 124 West Enterprise Street, Glen Lyon, PA 18617.
6. Defendant, Borough of West Chester, is a municipal corporation with an address of 401 East Gay Street, West Chester, PA 19380 and acts through its agents and employees, including Officers Ferriola and Cugino. The City operates under a Mayor/ Council/Manager form of government with authority over all borough functions including law enforcement, to include the West Chester Borough Police, and the enactment and enforcement of legislation, ordinances, and regulations governing the borough.
7. At all times material hereto, Officer Jerry Ferriola, is and was a law enforcement officer for the West Chester Borough Police and is being sued in his official and individual capacity. At all times material hereto, Defendant Ferriola was acting under color of state law.
8. At all times material hereto, Officer Greg Cugino, is and was a law enforcement officer for the West Chester Borough Police and is being sued in his official and individual capacity. At all times material hereto, Defendant Cugino was acting under color of state law.

FACTUAL ALLEGATIONS

9. Plaintiff hereby incorporates each of the foregoing paragraphs as if set forth fully herein.
10. On or about November 1-2, 2019, Kevin Nieves was celebrating his birthday with friends in West Chester Pennsylvania, a suburban college town.
11. Mr. Nieves started the evening at Barnaby's, a restaurant/bar in West Chester, Pennsylvania.
12. After leaving Barnaby's and going to a different establishment, Mr. Nieves realized he did not have his cell phone.

13. Believing he had left it at Barnaby's he attempted to return to Barnaby's where he was denied admittance.
14. After an exchange with an employee at the door of Barnaby's, Officers Jerry Ferriola and Greg Cugino were summoned by the Barnaby's employee.
15. The officers led Mr. Nieves to their police car.
16. They then moved Mr. Nieves to the rear of the car and tackled him to the ground.
17. It should be noted that Mr. Nieves is short (approximately 5'6") and slight of build (approximately 150 lbs.), while the officers in question are much larger and more powerful than Mr. Nieves.
18. While on the ground one of the officers shouted at Mr. Nieves "on your belly now".
19. Since Mr. Nieves at that moment was in the grasp of both Officers Ferriola and Cugino he was unable to comply, at which point, one of the officers with a closed fist struck Mr. Nieves in the head.
20. The officers then rolled Mr. Nieves onto his belly with Officer Ferriola placing his knee on Mr. Nieves back.
21. Mr. Nieves complained of injury, but was taken to the police station and not to the hospital to receive medical treatment, despite request by Mr. Nieves for the need for same.
22. Following their release Plaintiff Kevin Nieves reported to the emergency room for treatment for the injuries he sustained.
23. As a direct result of the above described acts, Plaintiff Kevin Nieves:
 - a. suffered injury to his eye, face, head, neck, and back, and bruising over his body and psychological injury,
 - b. was forced to endure pain, mental suffering, humiliation and embarrassment,
 - c. was forced to incur medical and legal expenses, and
 - d. was deprived of his physical liberty, all to his great detriment and loss.
24. The actions of all Defendants in the case were undertaken under color of state law and in the absence of justification, probable cause and/or or other valid or reasonable lawful basis.

25. The actions of the Defendants violated the clearly established and well-settled federal, constitutional, and state law rights of Mr. Nieves to be free from the use of excessive, unreasonable, and unjustified force against his person.

COUNT I

Use of Excessive Force

**Under 42 U.S.C. § 1983; Fourth and Fourteenth Amendment to the U.S. Constitution
Defendants Jerry Ferriola and Greg Cugino**

26. Plaintiff hereby incorporates each of the foregoing paragraphs as if set forth fully herein.
27. On or about November 2, 2019, Defendant Officers Jerry Ferriola and Greg Cugino violated Plaintiff's Fourth and Fourteenth Amendment protections against unreasonable seizure when they utilized excessive force against Plaintiff, denied him timely medical attention for the injuries as set forth above, and/or failed to intervene and take reasonable steps to prevent the use of excessive force.
28. The Officers' Conduct was willful, wanton, and with reckless disregard for the Plaintiff's constitutional rights and caused him great injury.

COUNT II

**Under 42 U.S.C. § 1983; Fourth and Fourteenth Amendment to the U.S. Constitution
Municipal Custom/Practice
Defendant Borough of West Chester**

29. Plaintiff hereby incorporates each of the foregoing paragraphs as if set forth fully herein.
30. Upon information and belief, prior to November 2, 2019, municipal defendant Borough of West Chester, through its agents and/or employees, was responsible for, aware of, approved of, acquiesced in, was deliberately indifferent to, and/or tolerated and ratified a pattern and practice of use of excessive force and denial of medical treatment to individuals in custody when arresting individuals, including:
- a. Failing to discipline or prosecute or in any manner deal with known incidents of abuse of police powers by West Chester Borough police officers;
 - b. Refusing to investigate complaints of previous incidents of abuse of police powers and instead officially claimed that such incidents were justified and proper; and

- c. By means of both inaction and cover-up of such abuse of police powers, municipal defendants encourage police officers including defendant officers in this case to believe that such abuse of police powers, including the use of excessive force was permissible.
- d. Allowing and tolerating the use of closed fist punches without necessity.

31. Municipal defendants have maintained either an inadequate system or no system of review of the civil rights violations by police officers, which results in the failure to identify instances of improper use of police powers, and/or failure to discipline, closely supervise officers, train officers, and/or retrain police officers who improperly engage in an abuse of police powers. Upon information and belief, the system deficiencies include, but are not limited to:

- a. Failing to develop, implement, carry out, and ensure compliance with policies, practices, customs, and/or procedures necessary to prevent excessive use of force;
- b. Preparation of investigative reports designed to vindicate the abuse of police powers, regardless of whether such actions were justified;
- c. Preparation of investigative reports which uncritically rely solely on the word of police officers involved in the incidents and which systematically fail to credit testimony by non-police officer witnesses;
- d. Preparation of investigative reports which omit factual information and physical evidence which contradict the accounts of the police officers involved;
- e. Issuance of statements exonerating officers involved in such abuse of police powers prior to the conclusions of investigation; and
- f. Failure to review investigative reports by responsible superior officers for accuracy or completeness and acceptance of conclusions which are unwarranted by the evidence or which contradict such evidence.

32. Upon information and belief, municipal defendants also maintain a system of grossly inadequate training pertaining to arrests and appropriate use of force and when to allow individuals injured by force utilized by officers to receive timely medical treatment stemming from same.

33. The foregoing acts, omissions and systemic deficiencies, policies and/or customs of municipal defendant have caused police officers of municipal defendant to be unaware of the rules and laws governing legal arrests and appropriate use of force in same, and to believe that said issues were entirely within the discretion of the officer and an improper use of police powers would not be honestly and properly investigated, all with the foreseeable result that officers are more likely to engage in abuse of police powers and utilizing force that was unreasonable, excessive and unnecessary under the circumstances and illegal.
34. Municipal defendants failed to promulgate and enforce a policy relating to the use of force during an arrest which is not in violation of the United States Constitution, thereby causing and encouraging police officers, including defendant officers in this case, to violate the rights of citizens such as plaintiff.
35. Municipal defendant failed to properly sanction or discipline officers who are aware of and subsequently conceal and/or aid and abet violations of constitutional rights of citizens including Fourth Amendment rights violations by other police officers, thereby causing and encouraging police officers, including defendant officers in this case, to violate the rights of citizens such as plaintiff.
36. Municipal defendant has intentionally and/or with conscious indifference to the danger of harm to citizens like plaintiff, established a system which fails to identify, track or report instances of excessive force and which is used by municipal defendants to conceal the extent to which police officers engage in such improper conduct.
37. The foregoing acts, omissions and systemic deficiencies of policies, practices and customs of municipal defendant have caused police officers of municipal defendant, including defendant officers in this case, to be unaware of or to disregard the rules and laws governing lawful use of force during an arrest, and believe that the violations of citizen's civil rights without just cause is a proper police practice, entirely within the discretion of the officer and that said use of excessive force would not be honestly and properly investigated by the Police Department, all with the foreseeable result that

officers, including defendants, are more likely to engage in said abuse by police powers and use of excessive force.

38. Municipal defendants are directly liable for their own acts and omissions, specifically with regard to the failure to train and the promulgation of violations of the plaintiff's Fourth and Fourteenth Amendment rights through the maintenance of a policy, custom, practice and/or procedure that ratifies, condones, and/or tolerates such violations.

39. As a direct and proximate result of the aforesaid acts, omissions, systemic deficiencies, policies and customs of municipal defendant, defendant officers violated plaintiffs Fourth and Fourteenth Amendment rights and improperly engaged in abuse of police powers, thereby causing severe personal injuries, and other damages more specifically set forth above in plaintiff's complaint.

**COUNT III
INTENTIONAL TORT CLAIM AGAINST DEFENDANTS
FERRIOLA AND CUGINO
ASSAULT AND BATTERY**

40. Plaintiff hereby incorporates each of the foregoing paragraphs as if set forth fully herein.

41. Defendants Ferriola and Cugino used excessive force by punching Mr. Nieves in the head and tackling him to the ground and forcibly placing a knee on Mr. Nieves back.

42. Defendants Ferriola and Cugino's use of excessive force was intended to cause harmful and/or offensive contact with Mr. Nieves.

43. Defendants Ferriola and Cugino intended to put Mr. Nieves in reasonable and immediate fear of a harmful or offensive contact.

44. As a result of Defendants Ferriola and Cugino's acts, Mr. Nieves was put in reasonable and immediate fear of harmful or offensive contact.

45. Harmful and/or offensive contact with Mr. Nieves directly resulted from Defendants Ferriola and Cugino's actions.

46. Defendants Ferriola and Cugino's conduct was not authorized, justified, or otherwise privileged.
47. Defendants Ferriola and Cugino committed these intentional torts against Mr. Nieves knowing that their actions were wrongful.
48. Defendants Ferriola and Cugino's desire was to bring about the result substantially certain to follow from Defendant's actions – injuries to Plaintiff.
49. The actions of Defendants Ferriola and Cugino were willful, wanton, reckless, callously indifferent, and in conscious disregard for the safety of others.
50. As a direct and proximate result of the above-described actions of Defendants Ferriola and Cugino, Plaintiff sustained severe injuries, causing him great physical pain and mental anguish.

**COUNT IV:
INTENTIONAL TORT CLAIM AGAINST DEFENDANTS FERRIOLA AND
CUGINO FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

51. Plaintiff hereby incorporates each of the foregoing paragraphs as if set forth fully herein.
52. Defendants Ferriola and Cugino acted in an extreme and outrageous manner in by punching Mr. Nieves in the head and tackling him to the ground and forcibly placing a knee on Mr. Nieves back and/or failing to allow him to get prompt medical attention.
53. Upon information and belief, they acted intentionally and with reckless disregard for Mr. Nieves' welfare, inflicting permanent emotional distress on Plaintiff.
54. Defendants acted in an extreme and outrageous manner in restraining Mr. Nieves, , punching Mr. Nieves in the head and forcibly placing a knee on Mr. Nieves back.
55. As a direct and proximate result of the above-described actions of Defendants Ferriola and Cugino, Mr. Nieves suffered emotional distress that was severe in nature.

56. Defendants Ferriola and Cugino's actions were of such an outrageous nature as to rise to the level of intentional, willful, wanton, or reckless conduct.

IV. RELIEF SOUGHT

57. Plaintiff hereby incorporates each of the foregoing paragraphs as if set forth fully herein.

58. Plaintiff Kevin Nieves seeks compensatory damages, against each and every named Defendant herein, jointly and severally, in an amount in excess of One Hundred Fifty Thousand (\$150,000.00) Dollars.

59. Plaintiff Kevin Nieves seek punitive damages against each and every named Defendant herein, jointly and severally, in an amount in excess of One Hundred Fifty Thousand (\$150,000.00) Dollars.

60. Plaintiff Kevin Nieves seeks attorney fees, expert fees, interest, litigation expenses, and costs against each and every named Defendant herein, jointly and severally.

61. Plaintiff Kevin Nieves seeks such other and further damages as this Court may deem just and proper under the circumstances.

WHEREFORE, Plaintiff, Kevin Nieves, respectfully prays that his demand for relief be granted against each of the Defendants, jointly and severally.

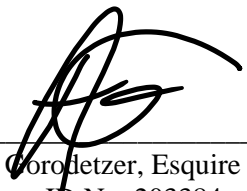
In Accordance with FRCP 38, Plaintiff, Kevin Nieves hereby demands trial by jury on all appropriate issues.

SBARBARO LAW OFFICES, LLC

DATE: 10-29-2021

BY:

/s/



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610-441-7523 (fax)
Attorneys for Plaintiff
Kevin Nieves